

## REMARKS

Applicants respectfully request entry of the enclosed amendments and reconsideration of this application. Currently, Claims 22-56 are pending, with Claims 30-35, 39-46, 50 and 52-56 being withdrawn from consideration. Claims 22-29, 36-38, 47-49 and 51 currently stand rejected.

### Claim Rejections

Claims 22-24, 27-29, 36-38, 47-49, and 51 were rejected as obvious over Miller ("829") in view of Breunig ("946"). Independent claims 22 and 48 have been amended to more clearly define the present invention and further distinguish the present invention from the cited references.

Claim 22 as amended recites an arrangement having a foot support sized and positioned on the first and second foot links to receive and support a user's foot while standing. The foot support is defined as having a heel supporting section and a toe supporting section. The present invention further includes an elevation system that alters the orientation of the foot support, thereby changing the nominal orientation of the heel section of the foot support relative to the toe section of the foot support during use. Thus, the foot support, which simulates the ground, is changed in inclination. As a result, the inclination of the user's foot also changes. As a further result, the type of motion being simulated can be varied from, for example, cross-country skiing motion, a walking motion, a running motion, a climbing motion, as well as whether such skiing, walking, running, or climbing is on a level plane, up a moderate incline, or up a steep incline.

As previously discussed, Miller "829" does not teach nor suggest changing the inclination of the user's feet to simulate different types of motion or different inclines being negotiated by the user. Further, Breunig merely teaches a chair (13) with its legs riding along tracks (24,25). These tracks are raised and lowered in unison so that the chair remains in horizontal orientation.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

In other words, the angle of the chair does not change as would be the case if the chair were actually simulating being on an incline, in the manner of applicants' foot supports as now specified in Claim 1 as amended.

In the present invention, by actually changing the inclination or orientation of foot supports carried by the foot links, the foot supports more closely simulate the slope of the ground on which the exerciser is skiing, walking, running, climbing, etc. Consequently, applicants respectfully submit that Miller and Breunig, whether considered alone or in hypothetical combination, do not disclose nor suggest the present invention as now set forth in Claim 22.

Subclaims 23, 24, 27-30, 36-38 depend directly or indirectly from Claim 1, and thus also should now be deemed allowable over Miller in view of Breunig.

With respect to Claim 47, we note that this claim specifies that the elevation system manually raises and lowers one of the first and second ends of the frame, which in turn selectively increases and decreases the relative elevation of the first end of each foot link relative to the second end of each foot link. This construction is not disclosed nor suggested in either Miller or Breunig. In Miller, neither end of the frame (12) is raised or lowered relative to the floor. The same is true in Breunig, wherein frame (11) lies flat on the floor, see Figure 1. Accordingly, applicants respectfully submit that the present invention as defined in Claim 47 is neither disclosed nor suggested by Miller or Breunig, whether considered alone or in hypothetical combination.

Independent Claim 48 has been revised to specify that the elevation system includes manually graspable lift handles to raise and lower the guide relative to the frame, and further comprises a stop that is structurally distinct from the lift handle to retain the guide in such raised or lowered position. This feature is neither disclosed nor suggested in the cited references. As previously noted, Miller does not provide any provision for changing the elevation of a foot link

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

guide relative to the floor. Moreover, Breunig discloses a rotary crank, but no lift handle. Breunig also does not disclose nor suggest a stop structurally distinct from a lift handle to retain a guide in raised or lowered positions. Accordingly, applicants respectfully submit that the present invention as now defined in Claim 48 also is neither disclosed nor suggested by Miller or Breunig, considered individually or in hypothetical combination.

Claims 22-26, 29-36, 38, 47-49 and 51 were rejected under 35 U.S.C. § 102(a) as anticipated by Wang et al. ("112"). Applicants hereby submit copies of two declarations by Paul D. Barker and a declaration by Jerald E. Nagae under 37 C.F.R. § 1.131, swearing behind Wang et al. These declarations were submitted in sister U.S. application No. 09/382,555. The present application and the 09/382,555 application both are continuations of prior application No. 08/967,801. The disclosure for the present application is identical to that in the sister application, No. 09/382,555. The contents of the present application and the exercise device defined by the claims of the present invention are within the subject matter discussed at the meeting attended by the undersigned and by inventor Paul D. Barker, held prior to October 16, 1997. Accordingly, applicants submit that Wang et al., is unavailable as a prior art reference with respect to the claims of the present application. Applicants respectfully request that the Examiner withdraw the rejection of Claims 22-26, 29-36, 38, 47-49, and 51, based on Wang et al.

#### Double Patenting

Claims 22-29, 37-38, 47-49, and 51 were rejected under the judicially created Doctrine of Obviousness Double Patenting, as being unpatentable over Claims 1-20 of U.S. Patent No. 6,482,130. Applicants hereby submit a Terminal Disclaimer to address the obviousness-type double patenting issue.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

Claims 25 and 26

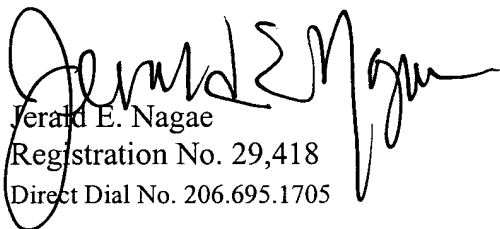
With the removal of Wang et al. as a reference, Claims 25 and 26 should be returned to their previous state, i.e., as being objected to for depending from a rejected base claim, including Claim 22 (prior to the foregoing amendments made to Claim 22). Accordingly, Claims 25 and 26 have been rewritten in independent form. These claims should be allowable as rewritten.

Closure

Applicants respectfully request the examination of the present application. If the examiner has any questions or comments, a telephone call to applicants' undersigned attorney would be appreciated.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>

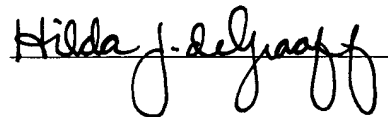
  
Gerald E. Nagae  
Registration No. 29,418  
Direct Dial No. 206.695.1705

Enclosures:

Copies of Baker Declarations - 2  
Nagae Declaration  
Terminal Disclaimer

I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: March 26, 2004



JEN:hjd

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100